

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

TIMOTHY RIVET,
Appellant,

v.

G1-14-206

CITY OF LAWRENCE,
Respondent,

and

HUMAN RESOURCE DIVISION
Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR MODIFIED RELIEF

On August 20, 2015, the Civil Service Commission (Commission) issued a decision regarding Timothy Rivet v. City of Lawrence and Human Resources Division, 28 MCSR 454 (2015) (Commission Decision).

As part of the Commission's decision, it was found that:

1. On February 7, 2014, the City's Police Chief granted Mr. Rivet a conditional offer of employment for the position of permanent, full-time police officer.
2. Subsequent to receiving the conditional offer of employment, Mr. Rivet successfully passed a medical examination and the Physical Abilities Test (PAT).
3. At some point after February 7, 2014, newly-elected Mayor Daniel Rivera expressed his concern regarding the Police Chief's decision not to grant another candidate (Candidate X) a conditional offer of employment.
4. According to the City's Personnel Director, Candidate X was involved in a recent criminal matter.
5. Mayor Rivera directed the City's Personnel Director to inform Candidate X that he should report for medical screening and the PAT.
6. Mayor Rivera reviewed the personnel file of Mr. Rivet, who has been a Traffic Control Officer for the City since 2003. There were two warnings in Mr. Rivet's personnel file.
7. Years prior, the City had agreed to remove one (1) of the warnings from Mr. Rivet's personnel file, but failed to do so.
8. The other warning related to alleged abuse of sick time. The evidence, including statements from Mr. Rivet's supervisor, showed that Mr. Rivet never abused sick time.
9. Overruling the recommendation of the City's Police Chief and the City's Personnel Director, Mayor Rivera sought to bypass Mr. Rivet – and to have his name removed entirely from the eligible list of candidates, thus preventing him from being placed on any further Certification from the eligible list in place at the time.

10. HRD initially declined Mayor Rivera's above-referenced request, concluding that the reasons provided did not sufficiently "relate to the position".
11. Mayor Rivera submitted a reply to HRD and asked to speak personally with an HRD representative.
12. HRD subsequently allowed Mayor Rivera's request to bypass Mr. Rivet and remove his name from the eligible list of candidates for police officer.
13. On September 19, 2014, HRD issued another Certification to the City to hire four (4) additional police officers. Mr. Rivet's name did not appear on that Certification due to his removal from the eligible list.

The Commission concluded that the City did not have reasonable justification to bypass Mr. Rivet and that HRD was not justified in removing Mr. Rivet's name from the eligible list of candidates for police officer.

As part of the August 20, 2015 decision, the Commission, consistent with its typical practice in such cases where a bypass appeal is allowed, ordered HRD to place Mr. Rivet's name at the top of any current or future Certifications for the position of Lawrence Police Officer until he was appointed or bypassed; and, if appointed, to grant Mr. Rivet a retroactive civil service seniority date back to the date of bypass. The decision was sent to HRD and the City on August 21, 2015.

On February 10, 2016, the Commission received an email from Mr. Rivet stating in relevant part:

"On August 20th I received a Civil Service decision, which was decided on my behalf. I was bypassed with the City of Lawrence, and I was hoping that maybe you could rectify an issue. The City has called for a selected certified list, which again is impeding me from getting the job."

On March 8, 2016, I held a status conference which was attended by Mr. Rivet, his counsel,

counsel for the City, the City's Human Resources Director and counsel for HRD.

As part of that status conference, the parties stated and/or it is undisputed that:

- Lawrence is a “consent decree community” meaning that appointments of entry level police officers in Lawrence are subject to the provisions of the Castro v. Beecher (Castro I), 334 F.Supp. 930 (D.Mass.1971); Castro v. Beecher (Castro II), 459 F.2d 725, 729 (1st Cir.1972); and Castro v. Beecher (Castro III), 365 F. Sup. 655, 660 (D.Mass.1973). As such, Certifications issued to Lawrence regarding police officer appointments is required to list a minority every *fourth* name (meaning that the other three candidates can be “non-minorities” such as Mr. Rivet).
- Mayor Rivera has expressed concern that the provisions of the consent decree, as applied today, result in the unintended, and unforeseen circumstance of non-minorities having an advantage over minorities and a police department whose ranks are not reflective of the largely Hispanic population in Lawrence.
- Sometime between the Commission’s decision in August 2015 and the date of the status conference, the City requested a special Certification from HRD based on race. HRD denied the City’s request as, according to HRD, special Certifications based on race are not permitted when a consent decree is in place.
- After HRD’s denial of the special Certification based on race, the City requested a “regular Certification” to appoint eight (8) police officers. Consistent with the relief ordered by the Commission, Mr. Rivet’s name appeared at or near the top of that Certification. Mr. Rivet signed the Certification as willing to accept appointment.
- The City subsequently sought a special Certification based on language fluency (only those who are fluent in Spanish would be eligible to appear on the Spanish-speaking Certification.)
- After reviewing the supporting documentation from the City, HRD issued a Spanish-speaking Certification to the City.
- The City “closed” the regular Certification without making any appointments from that Certification and proceeded to make appointments from the Spanish-speaking Certification.
- As Mr. Rivet is not fluent in Spanish, his name did not appear on the Spanish-speaking Certification.

Parties’ Positions

In short, Mr. Rivet argues that the City, by requesting a special Certification, is failing to provide him with the relief ordered by the Commission, thus compounding the harm already done to him when he was bypassed and his name removed from an eligible list. He asks the

Commission to “right the City’s ongoing wrongs” by ordering his immediate appointment as a police officer.

The City argues that the request for a special language Certification was not intended to frustrate the relief granted to Mr. Rivet, but, rather, was done for legitimate reasons and in the best interest of the City’s Police Department. Further, the City “reserves its rights during its next round of hiring to possibly request a special certification, such as the bilingual certification, that may exclude certain candidates” (including Mr. Rivet).

Commission Response

The events leading up to the bypass / removal of Mr. Rivet during the 2014 hiring cycles are disturbing. *After* Mr. Rivet received notice of a conditional offer of employment from the City’s Police Chief and *after* the Town accessed Mr. Rivet’s medical history, the City’s Mayor, over the objections of his own Police Chief and Human Resources Director, effectively rescinded that conditional offer of employment for *non-medical reasons*. Further, the non-medical reasons cited by the Mayor here appear to be contrived. This is precisely the type of wrongdoing the Commission is here to prevent. In that context, the relief ordered by the Commission, which was meant to ensure timely reconsideration of Mr. Rivet, was reasonable. That relief, however, has, at a minimum, been delayed, possibly indefinitely, by the City’s decision to seek special language Certifications from HRD. Standing alone, the failure to reconsider Mr. Rivet’s candidacy in a timely manner appears unjust.

The Commission, however, does not operate in a vacuum nor do we treat lightly the broader context in which the City has requested special Certifications. The bedrock of the civil service system rest on adherence to basic merit principles, defined in part as: “assuring fair treatment of all applicants and employees in all aspects of personnel administration without regard to political

affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens.” G.L. c. 31, § 1. While not directly before the Commission, the City appears to raise legitimate issues regarding the potentially unintended consequences of a decades-old consent decree which effectively results in 3 out of every 4 appointments coming from a pool of *non-minority* candidates in a community whose population is now predominantly Hispanic. Commonsense – and equity – would appear to warrant a prompt review of the provisions of that consent decree.

In that context, I am not inclined, at this time, to recommend that the Commission modify the relief as requested Mr. Rivet by ordering his immediate appointment. Further, while the Commission, pursuant to G.L. c. 31, § 44, “may institute appropriate proceedings in the superior court for enforcement of its final orders or decisions”, I do not believe, based on the unique circumstances here, that the City’s decision to request a special language Certification, constitutes non-compliance of the Commission’s order by the City.

For these reasons, Mr. Rivet’s request to modify the relief ordered in Commission’s August 20, 2015 decision is *denied*.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman – Yes; Camuso, Commissioner – Yes; Ittleman, Commissioner – Yes; Stein, Commissioner – Yes; Tivnan, Commissioner – No).

Notice:
Mark Esposito, Esq.. (for Appellant)
Daniel Cocuzzo, Esq. (for Respondent)
Michael Downey, Esq. (for HRD)